

**RAIL SERVICE COMPETITION COUNCIL  
MEETING MINUTES**

**January 9, 2008  
11:00am – 3:00pm**

**Transportation Commission Room  
Helena, MT**

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**COUNCIL MEMBERS PRESENT:** Mike O'Hara (Chair), Ron de Yong, Dan Bucks, Carla Allen, Evan Barrett, Larry Bonderud, Russell Hobbs and Doug Miller

**COUNCIL MEMBERS ABSENT:** Bill Fogarty, Sen. Hansen, Jim Lynch, Rep. Milburn and Mike Scanlan

**REPRESENTING COUNCIL MEMBERS:** Dick Turner for Jim Lynch

**AGENCY REPRESENTATIVES AND GUESTS:** George Paul, John Witt, Chris Aageson, Joel Clairmont, Bing Von Bergen, Will Roehm, Zia Kazimi, MaryAnn Fiehrer, Barbara Ranf, Gary Schlaeger, Patty Schlaeger, Larry Finch, Spook Stang, Mike McKay, Quintin Apedaile, Hal Fossum and Trudi Schmidt

**RSCC ASSISTANCE:** Terry Whiteside, Gloria O'Rourke

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**1.0 Call Meeting to Order (Chairman Mike O'Hara), Roll Call, Introduction of Audience**

**2.0 Approval of Minutes from October 11<sup>th</sup>, 2007 Meeting**

Following roll call and introductions, Chairman Mike O'Hara requested a motion to approve the minutes of the October 11<sup>th</sup> RSCC meeting. Larry Bonderud moved to approve the minutes; Russ Hobbs seconded the motion. All voted in favor to approve the minutes.

**3.0 Technical Assistance Update – (Terry Whiteside)**

Highlights from Terry's presentation:

- Captive Shipper Day postponed from February to March. Coalition groups jointly hold a Captive Shipper Day in DC each spring to bring together captive shippers from all major industry and educate leaders about the 'lack of rail competition' problem.
- Updates on several Shipper Legislation items noting that the Rail Competition Bills (HR 2125 and S 953) are not re-regulatory.
- Update on STB activity including a study on rail competitiveness and review of the CP/DM&E Merger
- Evidence to support the argument that government does have the right to regulate a private business. For example, from the Middle Ages, public callings and business occupations, or those affecting the public interest, have been subject to control and regulation. Previous legal cases also demonstrate railroads must service branch lines and mainline rail customers equally.

Discussion:

- All RSCC subcommittees need to take a look at common carrier issues, gathering evidence of where common carrier requests are made and not met.

#### **4.0 Intermodal Study Update (Dick Turner for Jim Lynch)**

Dick Turner provided an update on a study being conducted by Montana Department of Transportation (MDT). MDT has a research program and solicits for research topics. Larry Bonderud proposed a study to investigate ways Montana could build the volume required to obtain service from Class 1 railroads. The topic was selected and Libby Ogard, of Prime Focus, out of Wisconsin, has been working on the study. MSU Bozeman is providing technical expertise as well. Dick said that MDT will inform RSCC when the study is ready for presentation, probably in March.

#### **3.0 Working Group Updates**

##### **3.1 Forest/Paper (Russ Hobbs, Chair)**

Chair Russ Hobbs and Terry Whiteside compiled a survey and sent it to industrial, lumber and timber shippers. The purpose of the survey was to identify problems with rail competition in this arena. Terry noted there is no consolidated data of rail shippers in the state which made the survey process a challenge. Surveys were sent to about 300 people with 15 responses received: 10 with forest products and 5 from mining/refining. There were no responses from classic industrial shippers. To obtain more survey data, outreach calls will be made.

To obtain additional information from respondents, Russ held a conference call with nine of the 15 survey respondents. Russ went through the Summary of the Industrial Shipper Survey with the conference members, identifying the following major trends:

- Respondents have pretty good coverage of rail use and substantial annual volume
- Few have access to alternate carriers—they are captive
- Availability of equipment varied from great to terrible
- Value perception differed between forest products and other shippers
- Service was a bigger issue than rates for non-forest product shippers.

It became obvious that different solutions are needed for different industries. A second call will be held January 17<sup>th</sup> to discuss what constitutes adequate service and apply solutions.

Russ was thanked for his efforts and for the progress being made.

##### **3.2 Ports/Intermodal (Bill Fogarty, Chair)**

As Bill Fogarty was unavailable today, Larry Bonderud reported for this working group. Larry said this group will be able to move forward once the intermodal study has been completed. The study will clarify action items for this group.

Gary Schlaeger said the use of one-way containers for export grain has the potential of providing “real” competition to relax the chokehold BNSF has over movement of grain which has been unchallenged outside the unsuccessful legislative, regulatory, courts or “jawboning” initiatives. It could be an “out-of-the-box” innovation of a 100-year-old handling system that dried up branch lines on which elevators were built at intervals to permit delivery of grain by wagons in one day. Trucking to mainline shuttle loaders is wearing out Montana’s highways as well as costing farmers more due to longer distances and higher fuel costs. They pay the railroads a dollar a bushel to ship grain to market

regardless of origin, destination or volume contract from rates of grain companies owning elevators.

This one-way container strategy could ultimately lower destination level grain prices while providing higher profits for new smaller buyers who may want to contract for a longer period in greater volume of smaller sized shipments. This could better compete with Canada's subsidized grain in the world market and divert more Montana grain to export from Eastern and Midwestern domestic grain markets which have more favorable grain rates for export to the Gulf and West Coast over greater distances than exist from Montana.

Once this one-way containerized grain starts moving in significant volumes initially by truck, rail carriers will be more inclined to establish "truck competitive" intermodal proportional rates which can be "bundled" by Third Parties in combination with ocean, barge or truck rates on a confidential contract basis because railroads won't be as dependent on the ship lines exclusively for containers.

Dan Bucks added that with modern information systems farmers could register with a business or coop, include necessary data, and bundle together the appropriate mix from containers from different farms that would satisfy the buyer.

Both the Intermodal and Agriculture Working Groups will look at these options.

### **3.3 Agriculture (Carla Allen, Chair)**

Carla Allen, Chair of the Agriculture Working Group, reported the Ag subcommittee conducted a survey within the subcommittee itself to identify problems and issues with rail within the ag arena. Once the problems have been identified, the subcommittee will rank the issues and begin crafting solutions.

### **3.4 Coal (Evan Barrett, Chair)**

Evan Barrett referred everyone to a copy of the minutes from the Coal Working Group conference call held January 7<sup>th</sup>. The purpose of the call was to discuss how to move forward in determining the needs of the coal industry as they relate to rail service competition issues in Montana.

Evan shared with the RSCC discussion items not covered in the minutes:

- ❖ While the world is hearing about the need to de-emphasize the use of coal, the demand continues to increase especially in China and India.
- ❖ Moving coal is a challenge as there is little or no competition. Three challenging issues: rates, extra cost impact (accessorial) and service issues.
- ❖ The STB is not responsive when rate cases are brought to them. Mike Scanlan shared that PPL put \$5 million into a rate case and had it thrown out due to a technicality.
- ❖ If the STB remains unresponsive, legislation will have to be the solution.

Action items for the Coal Working Group include:

Confer with Scott Rickard and Terry Whiteside to determine the feasibility of:

- ☞ Comparing trends, freight rates and coal severance taxes in Montana, Wyoming and other relevant locations.
- ☞ Analyzing multiple components of cost of production and transportation to the delivery of coal to final destinations (hopefully over a five to ten year period)

☞ Evaluating the differentials in other costs related to coal production.

Discussion:

- ❖ Dust coming off rail cars is becoming an environmental issue. Rail cars may have to be sealed and covered with hoods. This could affect rates.
- ❖ One solution to growth in the coal industry is to not move the coal out of state but refine it and use it here.

## **4.0 Rail Updates**

### **4.1 Union Pacific (Evan Barrett)**

Evan Barrett reported Patriot Rail purchased Rarus which is now called Butte Anaconda and is headquartered in Anaconda in the old Rarus office. The new owners want to partner with UP and are having very productive meetings to bring warehouse activities to the area, working with Port of Montana, Butte. George Paul added that a replacement still has not been named for Charlie Clark who passed away several months ago.

### **4.2 Canadian Pacific (Larry Bonderud)**

Larry Bonderud said Terry Whiteside's presentation contained a summary of updates regarding CP.

### **4.3 Montana Rail Link (Evan Barrett)**

Mike McKay, representing Montana Rail Link, reported business has been steady with agriculture commodities although lumber and forest products have been down.

### **4.4 BNSF Railway (Barbara Ranf)**

Barbara Ranf reported on a study recently completed for the Association of American Railroads titled "National Rail Freight Infrastructure Capacity and Investment Study." The U.S. DOT estimates that the demand for rail freight transportation—measured in tonnage—will increase 88 percent by 2035. This study estimates that an investment of \$148 billion (in 2007 dollars) for infrastructure expansion over the next 28 years is required to keep pace with and meet the U.S. DOT's forecast demand. Of this amount, the Class I freight railroads' share is projected to be \$135 billion and the short line and regional freight railroads' share is projected to be \$13 billion.

These investment projections assume that the market will support rail freight prices sufficient to sustain long-term capital investments. If regulatory changes or unfunded legislative mandates reduce railroad earnings and productivity, investment and capacity expansion will be slower and the freight railroads will be less able to meet the U.S. DOT's forecast demand.

### **4.5 Central Montana Railroad (Carla Allen)**

Carla Allen reported ag commodities have kept the rail line busy. She also said December was busy with seven Polar runs with Santa Clause that hauled over 2,000 people in seven trains.

### **4.6 Watco, Yellowstone, Mission Valley, others**

No report available.

## **5.0 Next Council Meeting**

### **5.1 Meeting Date and Location**

April 2<sup>nd</sup>, once again in the Montana Department of Transportation Commission Room.

### **5.2 Agenda Items**

Chairman Mike O'Hara commended the subcommittees for their work and encouraged everyone to be active between now and the meeting in April. Mike said that problems are coming into focus and the RSCC will next need to move on how to address the problems.

**6.0 Comments or Issues from Council Members**

Gloria O'Rourke offered assistance to any of the subcommittees needing to arrange calls, meetings, etc.

**7.0 Formal Public Comment Period**

No comments.

**8.0 Adjournment**

With no further business, Larry Bonderud motioned to adjourn the meeting; Russ Hobbs seconded the motion. All voted in favor to adjourn the meeting.